

Supreme Court, U. S.

FILED

NOV 16 1977

MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

NO. 77-515

HOLT CIVIC CLUB, etc., et al.,

Appellants,

vs.

CITY OF TUSCALOOSA, etc., et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

MOTION TO AFFIRM

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MOTION TO AFFIRM

Appellees respectfully submit that the Order of the Three-Judge District Court, granting the Defendants' Motion to Dismiss, with leave to the Plaintiffs to further amend etc., should be affirmed.

The facts upon which the law in this case must be predicated are set out in the Plaintiffs' (Appellants') complaint which, for convenience is reproduced herein as Exhibit "A".

Defendants' Motion to Dismiss, addressed to the complaint, is set out herein as Exhibit "B".

ARGUMENT

The complaint in this case fails to allege that the Plaintiffs have suffered injury or damage, or have been threatened with injury or damage, because of the enforcement of any ordinance or regulation of the City of Tuscaloosa effective outside of the Corporate Limits, other than allegations that certain Plaintiffs have been required to pay licenses or a higher price on wine or liquor (a license tax or fees). Title 28 USC Sec. 1341, (the Tax Injunction Act of 1937), withholds from the Federal Court jurisdiction to declare such ordinance ineffective through declaratory judgment,

and also withholds jurisdiction from the District Court to enjoin enforcement thereof.

No case or controversy or justiciable controversy is alleged which would warrant declaratory relief. Appellees believe that the allegations are not effective to vest jurisdiction in the District Court.

It is the Defendants' contention that a general sweeping attack on the right of a State to rest any extra-territorial jurisdiction in its municipalities, without any valid allegations of invidious classifications and, absent any allegations realistically stating an infringement of the constitutional guarantee of the right to vote, does not raise a substantial federal or constitutional question. At best, the complaint seems to raise the question as to whether or not a state enabling act is unconstitutional per se under Equal Protection or Due Process Clauses of the Constitution if the enabling act grants any vestige of extra-territorial regulation to the municipality.

We point out that there is no analogy between the facts alleged in this case and the facts as appearing in

Little Thunder v. South Dakota, 518 F. 2d 1253. (CA8, 1975).

Alabama follows the rule that "Municipalities are mere instrumentalities of the State, and possess only such powers as may have been delegated to them by the Legislature". City of Leeds v. Town of Moody, 294 Ala. 496, 319 So.2d 242 (1975). A city in Alabama may not zone extra-territorially. Roberson v. City of Montgomery, 285 Ala. 421, 233 So.2d 69 (1970). A city may not condemn lands or exercise the right of eminent domain outside of its corporate limits for public park purposes, or for any purpose not specifically granted to it by the State. City of Birmingham v. Brown, 241 Ala. 203, 2 So.2d 305 (1941). There is no authority granted to a city to tax outside of its corporate limits and the statute, set out as Section 733 of Title 37, at 8a, in the Appellants' jurisdictional statement, does not vest in the municipality any authority to tax outside of its corporate limits. It has long been the law of Alabama that a municipality could not charge a tax or license for revenue purposes outside the corporate limits, but that it could only make a reasonable charge in relation to the costs of services which were rendered.

The above section (Section 733) has been held by the Supreme Court of Alabama not to have altered this view of the law, but only acts as a limitation of the license to be charged.

Alabama Gas Company v. City of Montgomery, 249 Ala. 257, 30 So. 2d 651 (1947). The city is given no right to close or control highways or roadways outside the corporate limits, nor is it given any right to operate or control or dictate the operation of a school or school systems lying outside of its corporate limits. It could hardly be said that the municipal governing body governs that area outside of the city.

We submit that there is no analogy between the facts alleged in this case and the voting rights cases. The facts alleged herein do not indicate that state power is being used as an instrument for circumventing a federally protected right. Gomillian v. Lightfoot, 364 U. S. 339, 5 L.Ed. 2d 110, 81 S.Ct. 125.

In this state, laws granting specific extra-territorial jurisdiction to municipalities in the area of police and sanitary regulations have existed for many years and it could hardly be said that such power was either vested or is used as

an instrument for circumventing a federally protected right. The State interest in this case is the orderly development and minimal control of the area sometimes called "suburban areas" or "suburbia" immediately adjacent to the boundaries of the municipal corporation; areas which are or soon will be seeking incorporation in the city, seeking services in the nature of water and sewer, sanitation, police, fire, and health protection.

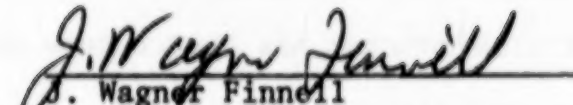
Surely the Court judicially knows that nearly every municipality is faced with the problem of granting services within its expanding boundaries and attempting to bring some order to the rapid and sometimes chaotic development in the area immediately surrounding the municipality. In addition, the State interest is concerned with the protection of the citizens within the municipality from unwholesome, unhealthy and unlawful activities and developments immediately adjacent to its Corporate Limits.

The Supreme Courts of nearly every state in the Union have upheld the authorization to municipal corporations to exercise some sort of police power outside of their corporate

limits to further police and fire protection, the preservation of the public health, the control of airports, zoning regulations, and a multitude of other such regulations. McQuillin Municipal Corporations, 1969 Revised Volume 6, Section 2457.

This case has been before the District Court, has been to the Fifth Circuit, reversed on the sole ground that consideration by a Three-Judge panel was indicated under the law, considered and ruled upon by the Three-Judge panel and is now on appeal both to the Supreme Court of the United States and on delayed appeal again to the Fifth Circuit. Defendants earnestly request that the judgment of the District Court be affirmed and that the case be finally laid to rest.

SUBMITTED BY:


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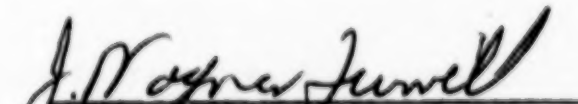
CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that, prior to or immediately after filing a copy of the foregoing with the Court, I mailed or delivered a copy of the foregoing to the following:

Mr. Edward Still
601 Title Building
Birmingham, Alabama 35203

Mr. Neil Bradley
52 Fairlie Street N. W.
Atlanta, Georgia 30303

DATE:


J. Wagner Finnell

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

HOLT CIVIC CLUB, an unincorporated association, on behalf of its members; Jimmy Clements, Clyde Jones, Herbert Flora, Joe Perkins, Sr., William Gordon, Victoria Harris, Roy Johnson, Donald Lankford, individually, as representative members of the Holt Civic Club, and on behalf of all others similarly situated,

PLAINTIFFS,

VS.

CITY OF TUSCALOOSA, a municipal corporation, on behalf of all other municipal corporations in the State of Alabama; C. SNOW HINTON, C. DELAINE MOUNTAIN, and HILLIARD FLETCHER, individually, as members of the Tuscaloosa City Commission and on behalf of all municipal executive officers and legislative bodies in Alabama; and GORDON ROSEN, individually, as City Recorder of Tuscaloosa, and on behalf of all other municipal judges in Alabama,

DEFENDANTS.

C.A. No. 73-M-736

MOTION TO AMEND COMPLAINT

Come now the Plaintiffs and move to substitute this Amended Complaint for the Complaint as amended heretofore.

1. This action arises under the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the Constitution to the United States, and 42 U.S.C. §1983. Jurisdiction is vested in this Court by 28 U.S.C. §§1331, 1343, 2201, and 2281.

PLAINTIFFS

2. The Holt Civic Club is an unincorporated association of residents of the Holt community in Tuscaloosa County who have joined together to promote the best interests of the Holt community. The Holt Civic Club through the members listed sues on behalf of its members, under the authority of FRCP 23.2.

3. The individual Plaintiffs, Jimmy Clements, Clyde Jones, Herbert Flora, Joe Perkins, Sr., William Gordon, Victoria Harris, Roy Johnson and Donald Lankford, are each (1) members of the Holt Civic Club; (2) residents of Tuscaloosa County, Alabama; (3) residents of the Holt community

living outside the City of Tuscaloosa but within three miles of said city.

4. The named individual Plaintiffs are representative of the class of residents of Alabama who live outside any incorporated municipality but within the "police jurisdiction" of a city or town. These individuals meet the requirements of Rule 23(a) of the FRCP and this action may be maintained as a class action under paragraph (b) (1) or (b) (2) of said Rule.

DEFENDANTS

5. (Deleted)

6. The City of Tuscaloosa is a municipal corporation organized and operating under the laws of the State of Alabama. C. Snow Hinton, C. Delaine Mountain, and Hilliard Fletcher are the City Commission of Tuscaloosa and therefore combine the legislative and executive functions. Gordon Rosen is the City Recorder for Tuscaloosa and is charged with the duty of judicially administering the ordinances of Tuscaloosa. The City of Tuscaloosa and each named Defendant are sued as

representatives of all municipalities, all municipal executives, all municipal legislative bodies, and all municipal judicial officials in the State of Alabama. The prerequisites and requirements of Federal Rules of Civil Procedure 23 (a) and (b) (1) or (b) (2) have been met.

FACTS AND CAUSES OF ACTION

7. Alabama Code, Tit. 37, S9, provides that municipalities of six thousand or more inhabitants shall have a police jurisdiction of three (3) miles from its city limits while smaller municipalities shall have a one and a half (1.5) mile police jurisdiction. Police jurisdiction is defined by that section as the area within which the municipality may enforce police or sanitary regulations. Judicial interpretation has added the limitation that no city may exercise police jurisdiction over the territory embraced by the corporate limits or police jurisdiction of another city or town.

8. Alabama Code, Tit. 37, S585, specifically grants a municipal recorder with judicial powers in the police jurisdiction.

9. Alabama Code, Tit. 37, S733, provides for the

collection by a municipality of licenses from businesses located within the police jurisdiction.

10. Persons, such as the Plaintiffs, who live outside the limits of a municipality are not allowed to vote in city elections, or participate in or initiate referendum or recall elections.

11. The denial of the right to vote in city elections to persons in police jurisdictions infringes on their constitutional right (under the due process and equal protection clauses) to a voice in their government.

12. Because the police jurisdiction automatically changes when the municipal limits change, residents of unincorporated areas are often thrust into the police jurisdiction of a municipality without their permission and without regard to due process of law.

13. All, or nearly all, of the City of Northport is within three miles of the City of Tuscaloosa. Because the City of Tuscaloosa cannot exercise police jurisdiction over the City of Northport, the residents of the Holt community are denied equal protection of the laws in that they are

governed by the City of Tuscaloosa while other citizens who stand in the same political and geographical relationship to the City of Tuscaloosa are not so governed. Other members of the class face the same problem if they live in an area in which two or more municipalities are close together; for example in the Mobile, Pritchard, or Chickasaw police jurisdictions.

13A. Members of the class of Plaintiffs, including Clyde Jones have been required to purchase business licenses to engage in business within the police jurisdiction.

13B. Members of the class of Plaintiffs, including Clyde Jones and Donald E. Lankford have been required to purchase building permits from the City of Tuscaloosa and submit to inspections of buildings within the police jurisdiction.

13C. Members of the class of Plaintiffs, including Clyde Jones, Roy W. Johnson, Donald E. Lankford, and Herbert Flora, have been required to pay a Tuscaloosa city tax on cigarettes bought within the police jurisdiction.

13D. Members of the class of Plaintiffs, including

Roy W. Johnson, have been required to pay a Tuscaloosa city tax on packaged beer bought within the police jurisdiction.

13E. Members of the class of Plaintiffs, including Roy W. Johnson, have been required to pay a higher price on wine or liquor bought for on-premises consumption because of a tax imposed by the City of Tuscaloosa on retailers of wine and liquor in the police jurisdiction.

14. (Deleted)

15. (Deleted)

16. Alabama law requires a taxpayer to receive a rebate of taxes illegally collected only if the taxes were paid under protest. This court has no jurisdiction to enjoin the collection of state or local taxes, but the decision of this suit will affect the legality of such taxes. Therefore, the Plaintiffs request that all taxes, fees, or licenses paid to a municipality by persons in the police jurisdiction be considered to have been paid under protest. Such an order would have no adverse effect upon the Defendants but would preserve the rights of Plaintiffs' class to claim rebates of taxes if they obtain a favorable decision from this court.

RELIEF

WHEREFORE, THE PREMISES CONSIDERED, the Plaintiffs pray this Court to grant the following relief:

A. Certify both the Plaintiffs and Defendants as proper representatives of their respective classes.

B. Convene a three-judge district court to hear this action.

C. Declare Alabama Code, Tit. 37, S9, to be unconstitutional and enjoin its enforcement or implementation.

D. Declare Alabama Code, Tit. 37, SS585 and 733 to be unconstitutional insofar as they allow the exercise of any municipal power outside the limits of a municipality and enjoin their enforcement or implementation to that extent.

E. Grant a preliminary injunction requiring each member of the Defendant class to consider and hold that all taxes, licenses, and fees collected from persons residing within their respective police jurisdiction on account of activities or conduct in the police jurisdiction were paid under protest of the persons as to the constitutionality of collecting such tax, license, or fee; provided however, that no notice of such

consideration of protest shall be required from any party and further provided that this injunction shall not affect the applicable statute of limitations.

F. (Deleted)

G. Grant the Plaintiffs their costs, including a reasonable attorney's fee.

H. Grant such other, further, and different relief as the premises may demand.

Submitted by,

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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

(Convened Pursuant to 28 U.S.C. Sec. 2281)

HOLT CIVIC CLUB, an unincorporated)
association, et al.,)

PLAINTIFF,)

VS.)

CITY OF TUSCALOOSA, a Municipal)
Corporation, et al.,)

DEFENDANTS.)

C. A. 73-M-736

MOTION TO DISMISS

Comes now the Defendants and move the Court to dismiss the complaint in this cause on the following grounds:

1. That Title 28 U.S.C. Section 1341 prohibits the Court from asserting jurisdiction of statutes or ordinances providing for the purchase of business licenses, building permits or other types of fees or assessments prescribed pursuant to ordinance.

2. That the complaint alleges neither facts showing a case or controversy nor facts showing a justiciable controversy for declaratory relief other than facts setting up

controversies in regard to statutes providing for the levying of taxes or fees which come within the influence of the Tax Injunction Act of 1937, (Title 28 U.S.C. Section 1341).

3. The complaint fails to state a claim upon which relief can be granted since the allegations of the complaint raise no substantial federal or constitutional question.

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